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DOC #:
DATE FILED: 3/3/17

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---X

CAROL HILL on behalf of TYJUAN HILL,

Plaintiff,

-against-

PATRICK QUIGLEY,

Defendant.

---X

JOINT PRETRIAL ORDER

12 Civ. 8691 (AKH)

ALVIN K. HELLERSTEIN, DISTRICT JUDGE

Having conferred among themselves and with the Court pursuant to Rule 16 of the Federal Rules of Civil Procedure, the parties adopt the following statements, directions and agreements as the Pretrial Order:

i. Caption:

The full caption of the action is set forth above.

ii. Counsel:

For Plaintiff

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For Defendant

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Of Counsel: Matthew Modafferi, Patricia Miller & Joy Anakhu
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iii. Jurisdiction:

Plaintiff has brought this matter pursuant to 42 U.S.C. § 1983. Subject matter jurisdiction lies because of the federal question presented by this case.

Defendants do not dispute jurisdiction.

iv. Claims and Defenses:

Claim:

Plaintiff has brought this claim pursuant to 42 U.S.C. § 1983. The plaintiff claims that on September 20, 2012 her son Tyjuan Hill, without just cause, was shot and killed by one or more members of the New York City Police Department. The sole defendant at this time is Patrick Quigley. This constitutes excessive force in violation of the plaintiff's Constitutional rights pursuant to 42 U.S.C. § 1983 and the Due Process Clause of the Fourteenth Amendment to the United States Constitution as to the individually named defendant Patrick Quigley.

Defenses:

a) Defendant Quigley did not violate any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor have they violated any Act of Congress providing for the protection of civil rights.

b) Defendant Quigley did not violate any clearly established constitutional or statutory right of which a reasonable person would have known and therefore is protected by the defense of qualified immunity.

c) Defendant Quigley acted reasonably and properly in the lawful exercise of his discretion.

d) Any force was reasonable and justified under the circumstances.

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v. Pleadings:

A marked copy of the pleadings is annexed as the plaintiff's last exhibit to this Joint Pre-Trial Order.

vi. Jury or Bench Trial:

This case is to be tried before a jury. Plaintiff estimates the matter will take approximately two weeks to be tried. Defendants estimate five or six days to complete the presentation of the evidence.

vii. Consent to Magistrate Judge:

The parties have not consented to a trial by a Magistrate Judge.

viii. Stipulated Facts:

None.

ix. Witnesses:

Plaintiff's Witnesses:[1]

(1) Sgt. Patrick Quigley
(2) Sgt. Daniel Casella
(3) Sgt. Maggie Clamp
(4) Sgt. Gregory Tobin
(5) Det. Christopher Florio
(6) Det. Patrick Henn
(7) Det. Thomas Jurewicz

Objection to Det. Jurewicz – Detective Jurewicz's testimony was previously precluded by the Court. Detective Jurewicz was assigned to conduct a preliminary investigation into the shooting before the investigation was turned over to the Investigations Division and he has no firsthand knowledge of the incident. Your Honor read the plaintiff's proposed testimony from Detective Jurewicz's deposition and sustained Defendants' objection. (See Trial Transcript, 907:11-14 ("I don't see anything on pages 20 through 23 of the transcript that add anything to this case or rebut anything in this case. Defendants' objection is sustained"); 908:4-909:2 (regarding pages 43 and 44 from the deposition "Objection sustained"); 909:5-910:24 (regarding page 57 from the deposition "This doesn't add anything and I sustain the objection"); and 911:1-10 (regarding page 58 from the deposition "Objection sustained"; Mr. Colihan: "So that takes care of Jurewicz.")).

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[1] Defendants reserve the right to call any and all witnesses listed by plaintiff.

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(8) Det. Joseph Christophe
(9) P.O. Jose Cofresi
(10) P.O. Benigno Gonzales
(11) P.O. Lyheem Oliver
(12) P.O. Cairley Rivera
(13) P.O. Sambath Ouk
(14) P.O. Bradley Tirol
(15) Jomo Cunningham
(16) Brian Ellerby
(17) Robert Davis
(18) Suzette Smoot, also known as Suzette Pallares
(19) Elena Emerson
(20) Jose Garcia
(21) Carol Hill
(22) Joseph Pollini (expert witness)

Objection to Joseph Pollini – Federal Rule of Civil Procedure 26(a)(2)(D) requires that expert disclosures be made "at least 90 days before the date set for trial." Plaintiff failed to comply with this rule and on March 1, 2017, identified Mr. Pollini as her expert, just six days before the start of trial. In addition to flouting the rules with respect to timing, plaintiff failed to provide an expert report or expert disclosures with respect to Mr. Pollini. Discovery and expert discovery has long since closed in this matter. If Mr. Pollini was properly and timely identified as an expert, the defense would have procured a rebuttal expert. In short, plaintiff failed to comply with the Federal Rules and Mr. Pollini must be precluded.

(23) Nicholas Kass-Johnson

Objection to Nicholas Kass-Johnson – Defendants previously moved to preclude Mr. Kass-Johnson from testifying on the grounds that he was not identified as a witness during discovery and Defendants did not have the opportunity to depose him. On September 9, 2016, Your Honor ruled that Mr. Kass-Johnson could appear as a witness provided "that the Defendants have an opportunity to depose Mr. Kass-Johnson." See Summary Order on Motions in Limine, Docket Entry No. 223. Mr. Kass-Johnson lives out of state and Defendants have not had an opportunity to depose him. Accordingly, he should not be allowed to testify absent sitting for a deposition.

(24) P.O. Julio Rodriguez

Defense Witnesses:

(1) Defendant, Patrick Quigley
(2) Lt. Daniel Casella
(3) Det. Benigno Gonzales
(4) P.O. Bradley Tirol

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(5) Det. Lyheem Oliver
(6) Det. Sambath Ouk
(7) Joanne Lee
(8) Charles Wetli, M.D. (expert witness)
(9) Darius Smith

x. Exhibits:

Plaintiff's Exhibits:[2]

Designation	Description of Exhibit	Basis for Objection[3]
1	NYPD CSU Diagram prepared in this case Run # 12-752-B NYC bates stamped NYC 01355 & 01356 (one page)	FRE 402, 403
2	Interview of Sgt. Quigley NYC Bates stamped #1359-1340 (Two pages)	FRE 402, 403, 802
3	Document labeled 76 Pct UMOS Shooting NYC Bates Stamped 01385 (One Page)	FRE 402, 403
4	NYPD PERSONNEL PROFILE REPORT for def. PATRICK QUIGLEY NYC Bates Stamped 01393-01394	*EXCLUDED FROM EVIDENCE*
5	The first page of a report designated as "Firearms Discharge 076 Pct NYC Bates Stamped 01401	FRE 402, 403
6	A document of one page designated "Crime Scene Unit" NYC Bates Stamped #01406	FRE 402, 403
7	A three (3) page document designated "NYPD-Omniform System – Complaints" NYC Bates Stamped 01421-01423)	FRE 402, 403
8	A one (1) page document designated 076 Precinct Tactical Plan NYC Bates Stamped 01439	FRE 402, 403
9	A three (3) page unsigned report entitled "Firearms discharge, 76th Pct." NYC Bates Stamped 01441-01443	FRE 402, 403

[2] Defendants reserve the right to use and/or introduce into evidence some or all of exhibits listed by plaintiff.

[3] Defendants reserve the right to amend and/or supplement these objections if and when they receive plaintiff's pre-marked exhibits.

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10	A two (2) page document entitled NYPD Property Clerk Invoice # 3000127148 NYC Bates stamped 1320-1321	FRE 402, 403
11	Autopsy Report for Tyjuan Hill	FRE 402, 403
12	Audio taped interviews of the Patrol Guide Hearings of defendants Patrick Quigley, Daniel Casella, Gregory Tobin, Sambath Ouk, Benigno Gonzales, Bradley Tirol, Cairley Rivera, Lyheem Oliver and witness P.O. Rodriguez. They were provided on a disc labeled NYC Bates stamped # 2264	*No objection to the extent the audio is played for impeachment purposes with the witness on the stand.* However, previously the audio was played as a "party admission" when the witness was not on the stand. Defendants object to that procedure because (1) the only remaining defendant is Quigley and (2) the non-party witnesses will only be present at trial when they are on the stand.
13	A one page document designated as NYPD CSU prepared by Det. Mathew dated 9/20/12 detailing the injuries of defendant Patrick Quigley	FRE 402, 403, 901
14	A one page document described as "complaint- followup informational #5 recording an interview with Jomo Cunningham NYC bates Stamped # 1587	FRE 402, 403, 802
15	---LEFT BLANK---	
16	A one page document described as "complaint – followup informational; #38 and Bates Stamped NYC 16	FRE 402, 403
17	A one page document described as "complaint – followup informational; #38 and Bates Stamped NYC 160	FRE 402, 403
18	A one page document described as property clerk's invoice # S050564 NYC bates stamped 01620	FRE 402, 403
19	A three page document described as Request for Laboratory Examination and Bates Stamped NYC 1621-23	FRE 402, 403
20	A one page document described as Complaint follow up – medical examiner case and Bates Stamped NYC 1625	FRE 402, 403
21	A one page document described as "Evidence Receipt" and Bates stamped NYC 1631	FRE 402, 403
22	WITHDRAWN BY PLAINTIFF	

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23	A one page document described as "property clerk's invoice" for 2 pairs of Smith & Wesson handcuffs and Bates Stamped NYC 1641	FRE 402, 403
24	One page document described as "physical evidence" and Bates Stamped NYC 1662	FRE 402, 403
25	WITHDRAWN BY PLAINTIFF	
25[4]	The judgment against Jose Cofresi and the City of New York in Brian Martin v. the City of NY, et al rendered in Kings County Supreme Court under Index # 025186/2009	FRE 402, 403, 802, 901 and previously precluded by the Court
26	The minutes of the testimony of Jose Cofresi in Brian Martin v. the City of NY, et al at the trial of said action in Kings County Supreme Court under Index # 025186/2009	FRE 402, 403, 802, 901 and previously precluded by the Court
27	A three (3) page report from Michael Henrique to Vicki Lisa concerning a Kel Tech 9mm pistol NYC Bates stamped 02014-16	
28	The two page document entitled "Officer History" for defendant Patrick Quigley NYC bates stamped NY 88-89	*EXCLUDED BY THE COURT*
29	A video of the incident taken by Elana Emerson and provided by the defendants as NYC bates Stamp # 01322 on a disc also labeled "Copy" 12-50094 76th Pct"	*EXCLUDED BY THE COURT*
30	An audio recording of a 911 call made by Suzette Pallares to the NYPD on the evening of the incident of approximately 20 minutes in duration. It was provided by the defendants on a disc labeled NYC 828 and is the second track on the disc	FRE 402, 403, 802 and previously precluded by the Court
31	An audio recording of a 911 call made by an unknown female caller to the NYPD on the evening of the incident. It was provided by the defendants on a disc labeled NYC 828 and is the first track on the disc	FRE 402, 403, 802, 901 and previously precluded by the Court

[4] Plaintiff lists two exhibits numbered "25".

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32	An audio recording of a 911 call made by an unknown male caller to the NYPD on the evening of the incident. It was provided by the defendants on a disc labeled NYC 828 and is the third track on the disc	FRE 402, 403, 802, 901 and previously precluded by the Court
33	CSU 5593 - depicts Hamilton Avenue northbound at West 9th Street	FRE 402, 403
34	CSU 5587 – depicts Henry Street from the corner of Huntington southbound	FRE 402, 403
35	CSU 5578 – depicts a pair of silver handcuffs	FRE 402, 403
36	CSU 5577 – depicts a pair of black handcuffs	FRE 402, 403
37	---LEFT BLANK---	
38	CSU 5567 – depicts can of OC spray owned by defendant Patrick Quigley	
39	CSU 5558 – depicts face of deceased	FRE 402, 403
40[5]	CSU 5557 – depicts deceased	FRE 402, 403
41	CSU 5556 – depicts deceased	FRE 402, 403
42	CSU 5555 – depicts deceased	FRE 402, 403
44	CSU 5549 – depicts deceased	FRE 402, 403
41	CSU 5556 – depicts deceased	FRE 402, 403
42	CSU 5549 – depicts deceased	FRE 402, 403
43	CSU 5548 – depicts deceased	FRE 402, 403
44[6]	CSU 5544 depicts Kel Tec 9mm pistol	FRE 402, 403
45	CSU 5556 depicts deceased & Kel Tech 9mm pistol	FRE 402, 403
46	CSU 5556 depicts deceased & Kel Tech 9mm pistol[7]	FRE 402, 403
47	CSU 5526 depicts deceased and Hamilton Ave. southbound at West 9th Street	FRE 402, 403
48	CSU 1843 Depicts defendant Lyheem Oliver	FRE 402, 403
49	CSU 1842 Depicts defendant Lyheem Oliver	FRE 402, 403

[5] The next 7 exhibits listed by plaintiff are mis-numbered and some are duplicative.

[6] This is the second exhibit listed as number "44".

[7] Plaintiff lists CSU 5556 four separate times as an exhibit.

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50	CSU 1841 Depicts defendant Lyheem Oliver	FRE 402, 403
51	CSU 1840 Depicts defendant Lyheem Oliver	FRE 402, 403
52	CSU 1839 Depicts defendant Lyheem Oliver	FRE 402, 403
53	CSU 1832 Depicts defendant Sambath Ouk	FRE 402, 403
54	CSU 1831 Depicts defendant Sambath Ouk	FRE 402, 403
54[8]	CSU 1830 Depicts defendant Sambath Ouk	FRE 402, 403
55	CSU 1829 Depicts defendant Sambath Ouk	FRE 402, 403
56	CSU 1828 Depicts defendant Sambath Ouk	FRE 402, 403
57	CSU 1827 Depicts defendant Daniel Casella	FRE 402, 403
58	CSU 1826 Depicts defendant Daniel Casella	FRE 402, 403
59	CSU 1825 Depicts defendant Daniel Casella	FRE 402, 403
60	CSU 1824 Depicts defendant Daniel Casella	FRE 402, 403
61	CSU 1822 Depicts defendant Cairley Rivera	FRE 402, 403
62	CSU 1821 Depicts defendant Cairley Rivera	FRE 402, 403
63	CSU 1820 Depicts defendant Cairley Rivera	FRE 402, 403
64	CSU 1819 Depicts defendant Cairley Rivera	FRE 402, 403
65	CSU 1818 Depicts defendant Cairley Rivera	FRE 402, 403
66	CSU 1815 Depicts defendant Patrick Quigley	FRE 402, 403
67	CSU 1814 Depicts defendant Patrick Quigley	FRE 402, 403
68	CSU 1813 Depicts defendant Patrick Quigley	FRE 402, 403

[8] This is the second exhibit listed as number "54".

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69	---LEFT BLANK---	
70	CSU 1812 Depicts defendant Patrick Quigley	FRE 402, 403
71	CSU 1811 Depicts defendant Patrick Quigley	FRE 402, 403
72	CSU 1810 Depicts defendant Bradley Tirol	FRE 402, 403
73	CSU 1809 Depicts defendant Bradley Tirol	FRE 402, 403
73[9]	CSU 1808 Depicts defendant Bradley Tirol	FRE 402, 403
74	CSU 1807 Depicts defendant Bradley Tirol	FRE 402, 403
75	CSU 1806 Depicts defendant Bradley Tirol	FRE 402, 403
76	CSU 1805 Depicts defendant Benigno Gonzales	FRE 402, 403
77	CSU 1804 Depicts defendant Bradley Tirol	FRE 402, 403
78	CSU 1803 Depicts defendant Bradley Tirol	FRE 402, 403
79	CSU 1802 Depicts defendant Bradley Tirol	FRE 402, 403
80	CSU 1801 Depicts defendant Bradley Tirol	FRE 402, 403
81	The trial testimony of Sgt. Daniel Casella taken September 13, 2016 p 126-210	**OBJECTION TO EXHIBITS 81 THROUGH 100 and 109 THROUGH 127** – *Defendant has no objection to the extent the trial and/or deposition transcripts are used for impeachment purposes with the witness on the stand.* However, defendant objects to the use of transcripts where the witness is not unavailable and where the witness is not on the stand. Moreover, the transcripts of the GO-15s are not certified and the audio (Exhibit 12) would be the more accurate form of that testimony.

[9] This is the second exhibit listed as number "73".

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82	The trial testimony of Sgt. PO Benigno Gonzales taken September 14, 2016 p 340-359	*Same*
83	The trial testimony of Lyheem Oliver taken September 14, 2016 p 306-339	*Same*
84	The trial testimony of Sgt. Patrick Quigley taken September 12, 2016 p 55-124 and September 19, 2016 p. 836-875	*Same*
85	The trial testimony of P.O. Sambath Ouk taken September 14, 2016 p 211-251	*Same*
86	The trial testimony of P.O. Bradley Tirol taken September 14, 2016	*Same*
87	The trial testimony of P.O. Jose Cofresi taken September 14, 2016 p 502-525	*Same*
88	The trial testimony of Suzette Smoot taken September 14, 2016 p 384-460	*Same*; also, this witness is not unavailable and therefore her prior testimony is not admissible
89	The trial testimony of P.O. Cairly Rivera taken September 14, 2016 p 444-483	*Same*
90	The trial testimony of Sgt. Maggie Clamp taken September 14, 2016 p 484-501	*Same*
91	The trial testimony of Detective Christopher Florio taken September 14, 2016 p 544-580	*Same*
92	The trial testimony of Elena Emerson taken September 14, 2016 p 581-639	*Same*; also, this witness is not unavailable and therefore her prior testimony is not admissible
93	The trial testimony of P.O. Alejandro Manzano taken September 20, 2016 p 940-955	*Same*
94	The trial testimony of P.O. Alejandro Manzano taken October 13, 2013	*Same*
95	The trial testimony of Darius Smith taken September 19, 2016 p 694-718	*Same*; also, this witness is not unavailable and therefore his prior testimony is not admissible
96	The trial testimony of Juan Garcia-Cortez taken September 19, 2016 p 719-748	*Same*; also, this witness is not unavailable and therefore his prior testimony is not admissible
97	The trial testimony of Joanne Lee taken September 19, 2016 p 748-823	*Same*

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98	The trial testimony of Dr. Charles Wetli taken September 19, 2016 p 823-825	*Same*
99	The deposition testimony of Darius Smith taken September 17, 2016	*Same*; also, this witness is not unavailable and therefore his prior testimony is not admissible
96[10]	The deposition testimony of Juan Garcia-Cortez	*Same*; also, this witness is not unavailable and therefore her prior testimony is not admissible
100	The deposition testimony of Joanne Lee from September 17, 2016	*Same*
101	The expert report of Dr. Charles Wetli	Hearsay FRE 802 – expert reports are not admissible evidence
102	A one page document marked defendant's 283 entitled "Police Identification of Body" signed by Alejandro Manzano	FRE 402, 403
103	A one page document marked defendant's 00353 entitled "Perpetrator's Firearm"	Defendant is unable to state his position since the Bates number listed does not coincide with a document entitled "Perpetrator's Firearm"
104	A one page document marked defendant's 0433 a voucher for two pairs of Smith & Wesson handcuffs	FRE 402, 403 and duplicative of Exhibit 23
105	A one page document marked defendants 0455 named "tactical plan"	FRE 402, 403
106	A one page document marked defendant's 0433 a voucher for two pairs of Smith & Wesson handcuffs	FRE 402, 403 and duplicative of Exhibits 23 and 104
107	A one page document marked defendants 0490 a marked Losing Prop Qualification Roster	FRE 402, 403
108	A one page document marked defendants 0508 entitled "Stolen Gun"	FRE 402, 403
109	The deposition testimony of Sgt. Daniel Casella	*See* *objection listed for Exhibit 81*
110	The deposition testimony of PO Benigno Gonzales	*Same*
111	The deposition testimony of Lyheem Oliver	*Same*

[10] This exhibit is incorrectly numbered as "96".

112	The deposition testimony of Sgt. Patrick Quigley	*Same*
113	The deposition testimony of PO Sambath Ouk	*Same*
114	The deposition testimony of PO Bradley Tirol	*Same*
115	The deposition testimony of PO Cairly Rivera	*Same*
116	The deposition testimony of Sgt. Maggie Clamp	*Same*
117	The deposition testimony of Detective Christopher Florio	*Same*
118	The transcript of the GO-15 hearing of Daniel Casella recorded on 9/21/2012	*Same*
119	The transcript of the GO-15 hearing of Benigno Gonzalesa recorded on 9/21/2012	*Same*
120	The transcript of the GO-15 hearing of Lyheem Oliver recorded on 9/21/2012	*Same*
121	The transcript of the GO-15 hearing of Patrick Quigley	*Same*
122	The transcript of the GO-15 hearing of Sambath Ouk	*Same*
123	The transcript of the GO-15 hearing of Bradley Tirol recorded on 9/21/2012	*Same*
124	The transcript of the GO-15 hearing of Cairly Rivera recorded on 9/21/2012	*Same*
125	The transcript of the GO-15 hearing of Maggie Clamp recorded on 9/21/2012	*Same*
126	The transcript of the GO-15 hearing of Julio Rodriguez recorded on 9/21/2012	*Same*
127	The transcript of the GO-15 hearing of Gregory Tobin recorded on 9/21/2012	*Same*
128	Handwritten notes taken by the KCDA of an interview of Daniel Casella	FRE 802
129	Handwritten notes taken by the KCDA of an interview of Benigno Gonzales	FRE 802
130	Handwritten notes taken by the KCDA of an interview of Lyheem Oliver	FRE 802
131	Handwritten notes taken by the KCDA of an interview of Patrick Quigley	FRE 802
132	Handwritten notes taken by the KCDA of an interview of Sambath Ouk	FRE 802
133	Handwritten notes taken by the KCDA of an interview of Bradley Tirol	FRE 802

134	Handwritten notes taken by the KCDA of an interview of Cairly Rivera	FRE 802
135	Handwritten notes taken by the KCDA of an interview of Maggie Clamp	FRE 802
136	Handwritten notes taken by the KCDA of an interview of Julio Rodriguez	FRE 802
137	Handwritten notes taken by the KCDA of an interview of Gregory Tobin	FRE 802

Defendant's Exhibits:

Designation	Description of Exhibit	Basis for Objection
A	Keltec 9mm firearm, magazine and cartridges	FRE 402, 403
B	Voucher for Keltec 9mm firearm, magazine and cartridges	FRE 402, 403
C	Radio transmissions	FRE 402, 403
D	Surveillance video from the corner of Huntington and Henry Streets	FRE 402, 403
E	DNA Report	FRE 402, 403
F	Still photographs from cell phone video	FRE 402, 403
G	SPRINT Report	FRE 402, 403

Dated: New York, New York
March 2, 2017

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By: /s/
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By: /s/
MATTHEW MODAFFERI

SO ORDERED:

HONORABLE ALVIN K. HELLERSTEIN
UNITED STATES DISTRICT JUDGE
3/3/17